

Summary
Water Pollution Control Board
Indiana Government Center North
Conference Room A
Indianapolis, Indiana
Wednesday, March 14, 2012

1. CALL TO ORDER

Chairman Gary Powdrill called the meeting to order at 1:30 p.m. A quorum was present.

Members present: Gary Powdrill; Ken Hedge; Dennis Wene; Robert Warnock; Erin Crofton; Dave Wagner; Dr. Jim Howell (substitute for Mike Mettler); Pam Fisher; Mike Neyer; and, Deborah Albright (Legal Counsel).

Present for IDEM: Commissioner Thomas Easterly; Bruno Pigott, Assistant Commissioner, Office of Water Quality (OWQ); Martha Clark Mettler, Deputy Assistant Commissioner, OWQ; Nancy King, Branch Chief, Rules Development Section (RDS), Office of Legal Counsel (OLC); MaryAnn Stevens, Rulewriter, RDB, OLC; and Kiran Verma, Rulewriter, RDB, OLC.

2. INTRODUCTION OF BOARD MEMBERS

Chairman Powdrill asked the board members to introduce themselves and their affiliations.

3. APPROVAL OF MEETING SUMMARY

Chairman Powdrill called for approval of the November 9, 2011 meeting summary. Mr. Dave Wagner asked to add specific language to the summary under the CFO Rule's board discussion. A motion was made and seconded to accept the November 9, 2011 meeting summary as amended. With a voice vote, the Board voted unanimously to approve the November 9, 2011 meeting summary with changes.

4. REPORTS

- NPDES Permit Backlog Report – Mr. Pigott discussed that there were three permits that have gone beyond their time for issuance due to the agency coordinating a review on the permits with the U.S. EPA. He stated that those particular permits were currently public noticed and IDEM is anticipating to be able to expedite the issuances of those permits.
- Nutrient Criteria for Indiana Lakes – Mr. Pigott reported that the workgroup was continuing to focus on the phosphorus issue.
- NPDES General Permits – Mr. Pigott discussed how the U.S. EPA had sent a letter requesting that IDEM move from issuance of general permits by rule to administrative issuance of general permits. He explained that the first notice was completed and staff was currently working on a second notice that would meet the U.S. EPA's schedules and requirements.
- NetDMR – Mr. Pigott explained how IDEM was working on a new NPDES program in conjunction with the U.S. EPA's expected new rulemaking called NetDMR. He stated that the federal's new rulemaking would require NPDES permit holders to submit their discharge monitoring reports (DMRs) electronically to agencies nation-wide.

Prior to the rule actions, Chairman Powdrill stated that there would be no April board meeting.

5. RULE ACTIONS

Emergency Rules for Concentrated Animal Feeding Operations (CAFO)

Chairman Powdrill opened the board action for consideration of adoption of the CAFO emergency rules under IC 4-22-2-37.1. He then introduced Exhibit A, proposed emergency rule, into the record of hearing.

Ms. King spoke for the agency regarding the emergency rule.

Mr. Mark Legan asked about outreach to inform CFO and CAFO farmers about the final CFO and CAFO rules. Ms. King responded that the agency was working on final documentation that would be made available prior to community outreach meetings.

There was no board discussion and the Board voted unanimously to adopt the CAFO emergency rule.

LSA Doc. #10-414 Incorporation by reference of Cross Connection Control documents and related technical changes rules

Chairman Powdrill opened the public hearing to consider final adoption of amendments to 327 IAC 8-10, Cross Connection Control. He introduced Exhibit B, proposed rule as preliminarily adopted, and Exhibit B1, IDEM's suggested changes, into the record of hearing.

Ms. Kiran Verma spoke for the agency and discussed how the rule would incorporate by reference the most recent edition of the "Manual of Cross Connection Control" and would include the February 7th version of the 2012 edition of the "List of Approved Backflow Prevention Assemblies." She added that the rulemaking had made related technical changes and corrections.

The hearing concluded and there was no board discussion.

Mr. Dennis Wene made a motion to adopt IDEM's suggested changes and Ms. Erin Crofton seconded it. With a voice vote, the Board unanimously voted to adopt IDEM's suggested changes. Thereafter, a motion was made and seconded for the final adoption of the proposed rule as amended. With a roll call vote, the Board voted unanimously for the final adoption of the Cross Connection Control rule as amended.

LSA Doc. #11-320 WQS Chloride and Sulfate rules

Chairman Powdrill opened the public hearing to consider preliminary adoption of amendments to 327 IAC 2-1-6, Water Quality Standards for Chloride and Sulfate. He introduced Exhibit C, draft rule, into the record of hearing.

Ms. MaryAnn Stevens spoke for the agency. She reminded the Board about the May 2011 citizens' petition that was presented to the Board to initiate a rulemaking dealing with the chloride and sulfate levels. Ms. Stevens commented that a workgroup meeting was held and at that meeting, all participants agreed to move forward with the rulemaking. She explained how the rulemaking would incorporate the most recent toxicological studies on chloride used by U.S. EPA to develop the existing chloride criteria and amend the sulfate criteria.

There was a board discussion. Mr. Dave Wagner and Chairman Powdrill also commended IDEM on taking expeditious action to bring this rulemaking before the Board.

A motion was made by Ms. Crofton to preliminarily adopt the rule and seconded by Mr. Wene. With a voice vote, the Board unanimously voted to preliminarily adopt the WQS Chloride and Sulfate draft rule.

LSA Doc. #08-764 Antidegradation Standards and Implementation Procedures Rule.

Chairman Powdrill opened the public hearing to consider final adoption of amendments to 327 IAC 2-1.3 and 327 IAC 5-2-11.2, Antidegradation rule. He then introduced Exhibit D, the proposed rule as preliminarily adopted, and Exhibit D1, IDEM's suggested changes, into the record of hearing.

Commissioner Easterly spoke for the agency. He presented a PowerPoint presentation "Antidegradation Overview of Third Notice Comments and Responses" that summarized the agency's development of the rule.

Chairman Powdrill called on Dr. William Beranek, Indiana Environmental Institute, to speak about specific items in the rule that might be considered roadblocks to potential industries coming to Indiana.

Following Dr. Beranek speaking on the antidegradation issues, there were eight public commentors:

Mr. Justin Schneider, Indiana Farm Bureau; Mr. Brad Klein, Attorney, Environmental Law & Policy Center, on behalf of Environmental Coalition; Mr. Bowden Quinn, Conservation Program Coordinator for Sierra Club, Hoosier Chapter; Ms. Kim Ferraro, Director of Ag and Water Policy, Hoosier Environmental Council; Mr. Vince Griffin, Indiana chamber; Mr. Josh Trenary, Indiana Pork Advocacy Coalition; Mr. Patrick Bennett, Indiana Manufacturers Association and Indiana Water Quality Coalition; and Mr. Stan Pinegar, Indiana Energy Association, Indiana Utility Group.

Public hearing concluded and a comprehensive board discussion began.

The Board discussion included the following: (1) a motion was made and seconded to hold the proposed rule so that the Board could rewrite it; (2) clarification of the Board's options relative to amendments; (3) March 9, 2012, U.S. EPA Letter to the agency; (4) clarification of the state's statutes on final adoption procedures and citizens petition provision; (5) withdrawal of the motion for the Board to hold the proposed rule; and (6) possibility of a non-rule policy document.

In addition, Mr. Wene distributed copies to the Board that related to suggested rule language changes under sections 327 IAC 2-1.3-1(b), 327 IAC 2-1 and 327 IAC 2-1.5. A motion was made by Mr. Wene to revise rule language under 327 IAC 2-1.3-1(b). Mr. Hedge seconded it. There was a discussion on the proposed revisions. Chairman Powdrill called for a voice vote. The Board voted against the motion; therefore, Mr. Wene's motion was denied.

Mr. Wene then made a motion to revise rule language relating to the definition of "regulated pollutant" under sections 327 IAC 2-1 and 327 IAC 2-1.5. Mr. Hedge seconded the motion. Following a brief discussion, Chairman Powdrill called for a vote on the motion. With a voice vote, the Board voted against the motion, and it was therefore denied.

Thereafter, Chairman Powdrill called for a motion to adopt IDEM's suggested changes. A motion was made by Dr. Jim Howell and seconded by Ms. Crofton. With a voice vote, the Board voted to adopt IDEM's suggested changes. A motion was made by Mr. Wagner and seconded by Mr. Warnock to final adopt the rule as amended. With a roll call vote, the Board voted 6-2 for the final adoption of the Antidegradation Standards and Implementation Procedures.

6. OPEN FORUM

There was nothing else presented to the Board.

7. ADJOURNMENT

The next meeting is tentatively scheduled for 1:30 p.m. EDT on Wednesday, May 9, 2012, at the Indiana Government Center South Conference Room A. Chairman Powdrill adjourned the meeting at 5:05 p.m.

CHAIRPERSON

The summary is derived from Rules Development Branch staff members' notes. A typewritten transcript of the entire meeting is on file in the Office of Legal Counsel, Indiana Department of Environmental Management. To view approved summaries or minutes, you may go online to <http://www.in.gov/idem/4707.htm>.